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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Savage et al.

Serial No.: 10/669,771

Filed: Sept. 24, 2003

Title: PROCESS FOR DIRECT
FILTRATION OF
WASTEWATER

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Group Art Unit: 1724

Examiner: CINTINS, I.

Atty. Docket No.: SERV240STWP-CIP
Customer No. 37,334

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REPLY TO EXAMINER'S ANSWER

This brief is submitted as a Reply to the Examiner's Answer.

ARGUMENTS

35 USC 102(b) Rejections

In responding to the Examiner's Answer, it should be noted that the Applicant has elected to argue the 102(b) rejection of claim 2 separately from claims 1, 3-5, 8, and 15.

Claim 1, 3-5, 8, 15

The fine screening required by Nebolsine is precluded by the Applicant's definition of "directly" in the patent specification. The Examiner's Answer states that "the screening treatment of Nebolsine is not deemed to be precluded by the term "directly," since Appellant's recited process also employs a screening pre-treatment." The Examiner's statement is incorrect because the Applicant has specifically excluded Nebolsine's fine screening from the scope of his invention in accordance with MPEP § 2111.01.

As previously discussed in the Applicant's Appeal Brief (Pages 5-6) "narrow range screening" is a required element of the Nebolsine patent. *See Nebolsine Col. 2, lines 31-36; Col. 4, line 57 – Col. 5 line 26; Claim 1.* Nebolsine's "narrow range screening" is performed by "passing said fluid through a fine mesh screen, which is between 20 and 60 mesh." *Nebolsine Col. 9, line 41-42.*

MPEP § 2111.01 cites several Federal Circuit holdings regarding the definition of claim terms which are relevant to the present patent application. First, 2111.01 states that "the specification must be reviewed to determine "whether the presumption of ordinary and customary meaning is rebutted." *Tex. Digital*, 308 F.3d at 1204. Section 2111.01 also states that "the presumption will be overcome where the patentee, acting as his own lexicographer has set forth a definition for the term different from its ordinary and customary meaning or where the patentee has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope."

International Rectifier Corp. v. IXYS Corp., 361 F.3d 1363 1368, 70 USPQ2d 1209, 1214 (Fed. Cir. 2004).

In the present patent application, the Applicant has clearly manifested exclusion of the “narrow range screening” with a “fine mesh screen” of Nebolsine with the explicit statement: “Fine screening is not required.” *Application page 6, line 2*. In defining the direct filtration process of the Applicant’s invention, the Applicant specifically excludes Nebolsine’s “narrow range screening” from the scope of the Applicant’s direct filtration process. In the paragraph beginning of page 5, line 12 of the patent application, the applicant defines the direct filtration process as including “course screening (which) utilizes a bar rack with ½ inch openings between the bars or a wire mesh screen with 6.0 mm openings, to prevent accumulation of debris and waste solids too large to be backwashed from the filter.” *Application Page 5, line 27 – Page 6, line 2*. In this paragraph the Applicant goes on to explicitly state that “fine screening is not required.”

The Applicant’s specific exclusion of “fine screening” from the scope of the invention defines the claim 1 step of “piping high volume, raw, unsettled wastewater directly to a deep bed filter” to specifically exclude performing “fine screening.” MPEP § 2111.01 and the Federal Circuit clearly indicate that “using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope,” indicate a “definition for a term different from its ordinary and custom meaning.” In accordance with MPEP § 2111.01, the Applicant is acting as his own lexicographer and defining “directly to a deep bed filter” to exclude “fine screening.”

Given the Applicant's exclusion of "fine screening" from the definition and scope of claim, the Applicant asserts that claim 1 is not anticipated by Nebolsine's disclosure, which requires "narrow range screening." Therefore, Nebolsine fails to disclose all elements of claim 1 and claim 1 should be allowed.

As discussed above, claim 1 is not anticipated by Nebolsine. Therefore claims 3-5, 8, and 15, which depend for claim 1, are not anticipated by Nebolsine.

Claim 2

Claim 2 is argued separately from claims 1, 3-5, 8, and 15. Applicant's Claim 2 reads: "The process of claim 1 wherein the raw, unsettled wastewater is screened prior to piping to the deep bed filter."

Claim 2 is not anticipated by Nebolsine for two reasons. First, Nebolsine fails to disclose all elements of claim 1 because, as stated above, the Applicant's direct filtration process specifically excludes "fine screening." Second, as the Applicant has disavowed "fine screening" from the definition of direct filtration, the screening step of claim 2 is necessarily limited to course screening and excludes fine screening. As the Nebolsine patent required "narrow range screening," the screening process of claim 2, which does not include "fine screening," is not anticipated by Nebolsine. Therefore, claim 2 is in condition for allowance independently from claim 1.

35 USC 103(a) Rejections

Claims 6, 7, 9-14

As discussed above, claim 1 is not anticipated by Nebolsine because, among other reasons, the applicant defines the term “directly” in claim 1 to exclude “fine screening.” Claims 6, 7, and 9-14 depend from claim 1 and include all the elements of claims. As Nebolsine does not anticipate the direct filtration process excluding fine screening of claim 1, either alone or in combination with Maxson, dependent claims 6, 7, and 9-14 are not obvious.

Claims 16-23

As previously discussed, the Applicant, acting as his/her lexicographer, in accordance with MPEP § 2111.01, defined “directly” to explicitly exclude “fine screening.” The applicants statement “f(F)ine screening is not required” is an exclusion of Nebolsine’s “narrow range screening.” *Application page 6, line 2.* Independent claim 16 includes the term “directly” as defined by the applicant. Neither Nebolsine nor Maxson disclose the Applicant’s direct filtration process which explicitly excludes fine screening. Therefore, claim 16 is not obvious in light of Nebolsine and Maxson and should be allowed.

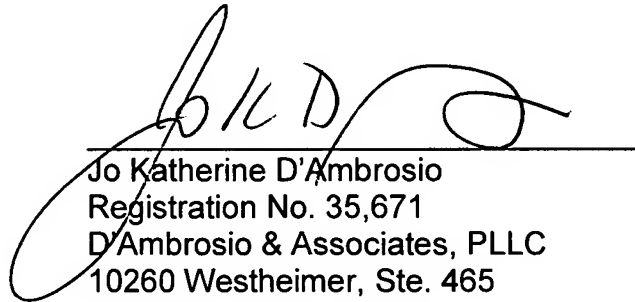
Claims 17-23 depend from claim 16 and include all the elements and limitations claim 16. Since neither Nebolsine nor Maxson disclose the direct filtration process of claim 1 as defined by the Applicant, dependent claims 17-23 are not obvious and should be allowed.

CONCLUSION

It is respectfully submitted that the art of record does not render anticipated or obvious the Applicant's claims. Accordingly, it is respectfully requested that the Examiner's rejection of claims 1 – 23 be reversed.

Respectfully submitted,

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